Drug Quantities in a Conspiracy: What Counts?

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In October of 2016, the Sixth Circuit decided *United States v. Gibson*.[2] Ray Gibson had pled guilty to conspiring to distribute fifty grams or more of methamphetamine, even though he was only directly involved in three small sales.[3] Adhering to precedent interpreting the federal drug conspiracy statute[4] to focus on the threshold quantity involved in the entire conspiracy,[5] the Court determined that an imposition of the mandatory minimum sentence of ten years was proper because Gibson admitted that the entire conspiracy consisted of fifty grams or more of methamphetamine.[6] At the end of the opinion, the Sixth Circuit states, "[t]he result in this case may appear unjust," and then goes on to say, "[n]onetheless, absent a change in our law from the en banc court, the Supreme Court, or Congress, we are bound by our precedents."[7]
One year later in October of 2017, the Sixth Circuit en banc court reheard the *Gibson* case.[8] Evenly divided on the issue, the en banc court had no choice but to affirm the ten–year sentence imposed by the district court, adhering to precedent focusing on the threshold quantity involved in the entire conspiracy.[9]

The Sixth Circuit is the only federal circuit court of appeals to hold a defendant accountable for the amount of drugs involved in the entire conspiracy. Every other federal court of appeals uses a "reasonably foreseeable" standard – the defendant is held accountable for all quantities with which he was directly involved and all reasonably foreseeable quantities that were within the scope of the criminal activity that he jointly undertook.[10]

The "entire conspiracy" rule of the Sixth Circuit is grossly unjust. It allows a defendant, such as Gibson, who was involved in only a few minor sales to be sentenced to many years beyond what he would have been had he been operating alone. Moreover, this rule does nothing to deter large–scale drug operations. The belief is that, facing many years in prison, sellers low on the totem pole will give information about those higher up. This belief overlooks the fact that there will always be the threat of retaliation to keep them quiet.

The "reasonably foreseeable" rule would strike a balance between crime deterrence and fairness to the defendant. Additionally, the eleven other federal circuits have already adopted this rule, evincing a national trend. The Sixth Circuit needs to give up its backwards interpretation of the federal sentencing statute and get on board with the rest of the circuits.

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[2] No. 15–6122, 2016 WL 6839156 (6th Cir. 2016).

[3] *Id.* at *1.

[4] 21 U.S.C. § 841(b)(1)(A).

[5] *United States v. Pruitt*, 156 F.3d 638 (6th Cir. 1998).

[6] *Gibson*, 2016 WL at *1.

[7] *Id.* at *2.

[8] 874 F.3d 544 (6th Cir. 2017) (en banc).

[9] *Id.*

[10] *See United States v. Carmona*, 685 Fed.Appx. 875, 879 (11th Cir. 2017); *United States v. Law*, 528 F.3d 888, 906 (D.C. Cir. 2008); *United States v. Foster*, 507 F.3d 233, 250–51 (4th Cir. 2007); *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006); *United States v. Vinton*, 429 F.3d 811, 817 (8th Cir. 2005); *United States v. Colon–Solis*, 354 F.3d 101, 103 (1st Cir. 2004); *United States v. Perez*, 280 F.3d 318, 352 (3d Cir. 2002); *Nichols v. United States*, 75 F.3d 1137, 1141 (7th Cir. 1996); *United States v. Quiroz–Hernandez*, 48 F.3d 858, 870 (5th Cir. 1995); *United States v. Becerra*, 992 F.2d 960, 966 (9th Cir. 1993); *United States v. Evans*, 970 F.2d 663, 676 (10th Cir. 1992).

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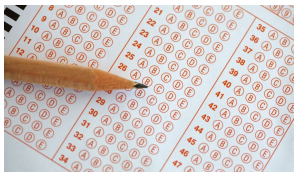

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